

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

GABRIELLE GARCIA,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

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NO. 5:02-CR-60 (WDO)

ORDER

Before the Court is petitioner **GABRIELLE GARCIA'S** notice of appeal (Tab # 33) from the Court's November 7, 2007 order, which adopted United States Magistrate Judge G. Mallon Faircloth's recommendation that petitioner's 28 U.S.C. § 2255 motion be denied. The Eleventh Circuit Court of Appeals has mandated that the Court construe petitioner's notice of appeal as an application for a certificate of appealability ("COA") pursuant to 28 U.S.C. § 2253(c). *Edwards v. United States*, 114 F.3d 1083 (11th Cir. 1997). Under section 2253(c), a COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right.

For the reasons stated in Magistrate Judge Faircloth's recommendation and this Court's order accepting the same, the Court finds that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Accordingly, the application for a COA is **DENIED**.

Also before the Court is petitioner's motion for leave to proceed *in forma pauperis* on appeal (Tab # 83). Said motion is **DENIED AS MOOT**.

SO ORDERED, this 30th day of January, 2008.

s/ **Hugh Lawson**

HUGH LAWSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT